



PARTNERSHIP FOR EMPLOYER-SPONSORED COVERAGE

December 20, 2019

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

The Honorable Alex Azar
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

The Honorable Charles Rettig
Commissioner
Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, D.C. 20044

RE: REG-136401-18
Notice 2019-63
Submitted via www.regulations.gov

Dear Secretaries Mnuchin, Azar and Scalia, and Commissioner Rettig:

The Partnership for Employer-Sponsored Coverage (P4ESC) writes with comments on the notice of proposed rulemaking (NPRM) regarding the Application of Employer Shared Responsibility Provisions and Certain Nondiscrimination Rules to Health Reimbursement Arrangements and Other Account-Based Group Health Plans Integrated with Individual Health Insurance Coverage or Medicare (REG-136401-18) and Notice 2019-63.

The Partnership for Employer-Sponsored Coverage is an advocacy alliance of employment-based organizations and trade associations representing businesses of all sizes and the over 181 million American workers and their families who rely on employer-sponsored coverage every day. We are working to ensure that employer-sponsored coverage is strengthened and remains a viable, affordable option for decades to come.

The Partnership greatly appreciated the opportunity to convene a meeting of its members and other employer stakeholders on November 6 with Randy Pate, Deputy Administrator for Centers for Medicare & Medicaid Service (CMS), Jeff Wu, Deputy Director of the Center for Consumer Information & Insurance Oversight (CCIIO), and several officials with the Departments of Health and Human Services (HHS), Treasury and Labor, and Internal Revenue Service (IRS) to talk about this NPRM and the utilization of health reimbursement arrangements (HRAs) by employers of all sizes.

Benefits offerings and coverage plans in the employer-sponsored system are as diverse as employers themselves. There is no one-size-fits-all employer plan. Consumer directed health products (CDHPs), such as HRAs, provide employers of all sizes with flexible coverage options for their employees and families. CDHPs are an important option at an employer's disposal. Providing employers the option of offering an HRA for the purchase of individual health coverage (IHC) may help small employers who would otherwise be unable to provide coverage of any kind to their employees. Additionally, permitting employers to offer an HRA for excepted benefits coverage would provide employees with additional financial assistance for services such as dental and vision.

The foundation of the employer-sponsored coverage system is rooted in workforce policy and business operations. Employers of all sizes offer coverage for employee recruitment and retention. The functionality of a



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business is centered around a productive, thriving and healthy workforce. The ability to offer coverage to employees and the ability to operate a business for its core purpose are not mutually exclusive functions. An employer offer of coverage is not merely a transaction in which an employee fills out paperwork, enrolls in coverage, and receives an insurance card – it is a multifaceted fiscal and operational commitment at the core of an employee-employer relationship. As employers are making the decision to offer coverage and determine which type of coverage to offer their employees, a critical aspect of this deliberation is the administrative compliance costs and complexities associated with the coverage.

REG-136401-18

The Partnership appreciates that the IRS recognized employers' need for compliance flexibility in the NPRM by incorporating several safe harbors for when an offer of an individual coverage HRA is made in conjunction with compliance with the Affordable Care Act's (ACA) employer shared responsibility, Section 4980H. The proposed safe harbors for individual coverage HRAs that track flexibility of similar safe harbors developed under the original 4980H rules are helpful to employers of all sizes.

Specifically, the location safe harbor's recognition of various scenarios with telecommuting employees and the look-back month safe harbor's recognition of calendar and non-calendar plan year differentiation are welcomed. We also appreciate the continued recognition by the IRS that an employer does not and should not know an individual employee's household income and thus, applying the current 4980H affordability safe harbors to an offer of an individual coverage HRA are welcome as well.

The further explanation and discussion of the NPRM and future guidance during our November 6 meeting was greatly appreciated. Following the meeting, we appreciated receiving additional information and resources from CCIIO for our associations and member employers to utilize. We are eager to have further discussions about the individual coverage HRA calculator and use of the calculator by state Exchanges, and compliance with the reporting requirements under Sections 6055 and 6056. We have provided some additional feedback on 6055 and 6056 below.

Further Communications with Employers and Employees on HRAs

As noted in our initial comments regarding REG-136724-17 and Notice 2018-88 and discussion on November 6, the Partnership recommends the Departments provide employers with a model template and sample language for a notice to employees regarding the offer of an HRA for IHC purchase, about the opt-out process and potential ineligibility for a premium tax credit (PTC) under an insurance Exchange. There remains much public confusion about the current PTC eligibility process and the two different definitions of "affordability" under the ACA – one for the purpose of PTC eligibility and one for the purpose of an ALE's compliance with 4980H.

The Partnership welcomes the opportunity to work collaboratively with the Departments, CMS and CCIIO in the coming months and year to develop communications for the audience of the employer and employee about use of an HRA and suggest refinements to communications on healthcare.gov and state Exchange platforms. Numerous members of the Partnership were members of the Employers for Flexibility in Healthcare (E-Flex) Coalition and provided the Departments and IRS with extensive comments during development of the ACA regulations. We are eager to continue discussions about developing communications with employers and employees that are specific to their needs and specific to the perspective of the employer community.



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Notice 2019-63; Future of 6055 & 6056 Reporting Requirements, 226-J Tax Penalty Letters

We appreciate the extended relief Treasury and IRS provided in Notice 2019-63 and request for comments on on-going compliance issues. With respect to further guidance about reporting compliance associated with an individual coverage HRA, we welcome the idea of simplified code inclusion on 1094-C forms instead of the creation of a new reporting form. With respect to the future of 1095-C forms, we believe these forms can be eliminated in their entirety.

The current ACA 6055 and 6056 reporting burdens loom large over employers of all sizes. The current IRS system issues a Letter 226-J to inform an employer of a tax penalty if the data is not matched to an individual's tax return, regardless of the employer's offer of coverage to a full-time employee. An employer has only 30 days to appeal. The issuance of 226-J tax penalty letters to employers which have complied with the law's employer mandate requirement leaves the employer vulnerable to tax penalties or requires additional administrative costs and compliance burdens to appeal the letters. The Partnership knows more can be done to simplify and streamline these requirements for employers and requests further discussions with the Departments and IRS.

Conclusion:

The Partnership for Employer-Sponsored Coverage appreciates the opportunity to work with the Administration, Congress and the broader stakeholder community in a bipartisan manner on reforms to our nation's health care system to ensure that employer-sponsored coverage is preserved and thrives for generations of hardworking Americans to come. As a coalition representing businesses of all sizes, we have the unique ability to provide operational input across the full spectrum of the employer system – from the smallest family business to the largest corporation. Employers have a great stake in the development and implementation of health care policies, and we look forward to working with you as this process continues.

Sincerely,
Partnership for Employer-Sponsored Coverage

The Partnership for Employer-Sponsored Coverage (www.p4esc.org) membership includes: American Hotel & Lodging Association, American Rental Association, American Staffing Association, Associated Builders and Contractors, Inc., Auto Care Association, HR Policy Association, International Franchise Association, National Association of Health Underwriters, National Association of Wholesaler-Distributors, National Restaurant Association, National Retail Federation, Retail Industry Leaders Association, Society for Human Resource Management

Contact:

Christine Pollack
Executive Director, Partnership for Employer-Sponsored Coverage
christine@pollackconsultingdc.com